



# भारत का राजपत्र The Gazette of India

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NEW DELHI, SATURDAY JANUARY 22, 1994/MAGHA 2, 1915

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

## भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों के छोड़कर) केंद्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं  
Orders and Notifications issued by Central Authorities (other than the Administration of Union Territories)

### भारत निर्वाचन आयोग

नई दिल्ली, 24 दिसम्बर, 1993

घा.प्र. 7:—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में भारत निर्वाचन आयोग 1991 की निर्वाचन अधि. सं. 42 में इलाहाबाद उच्च न्यायालय, इलाहाबाद के तारीख 26-2-1993 के निर्णय को एतद्वारा प्रकाशित करता है।

[सं. 82/उ.प्र.-जो. स./42/91]

आदेश से,  
हरिन्दर हीरा, सचिव

### ELECTION COMMISSION OF INDIA

New Delhi, the 24th December, 1993

O.N. 7.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgement dated 26-2-93 of the High Court of Judicature, Allahabad in Election Petition No. 42 of 1991,

[No. 82/UP-HP/42/91]

By Order,  
HARINDER HIRA, Secy.

IN THE HIGH COURT OF JUDICATURE AT  
ALLAHABAD

CIVIL SIDE

ORIGINAL JURISDICTION

DATED, ALLAHABAD, THE :—26-2-93

PRESENT :

THE HON'BLE G. D. DUBE.....JUDGE.

Election Petition No. 42 of 1991

Mirza Alamson of Sri Sultan Sab, alias  
Mirza Mohammad Sultan Hussain Lakhpatl,  
resident of House No. A-454, Jigar Bihar,  
Damdama kothi, Moradabad.

.....petitioner.

versus

Hasi Gulam Mohammad Khan elected Loksabha Member  
Moradabad Parliamentary Constituency, R/o village  
Mohammadi, Post Office Chandasi. District  
Moradabad, present resident of Loksabha  
Member Flat, New Delhi.

.....Respondent.

BY THE COURT

This Election petition has been preferred in respect of election of a Member for 7th Moradabad Loksabha Constituency held in June, 1991. The petitioner was an elector in the electoral roll of 33 Moradabad Assembly Constituency in the year 1989 voter list. He was one of the candidates for

the membership of the Loksabha Constituency along with the respondent. In this election the respondent was declared elected. The petitioner has challenged this election of the following grounds :

2. It was alleged that one Hardeo Singh, A.D.M. City, Moradabad, who was also a deputy Election Officer in Moradabad district, asked the petitioner to get down from the car at about 12.00 a.m. at Indira Chowk on 15th June, 1991 and asked the Incharge of Indira Chowk police post to take the petitioner to police-station Galshaheed. The petitioner was detained at the police-station till the arrival of Hardeo Singh. At about 5.00 p.m., Hardeo Singh came at police-station Galshaheed and took the petitioner to police lines, Moradabad and detained him there till midnight of 18-6-91. The election agent of the petitioner had sent telegrams to concerned authorities and the father of the petitioner sent letters by registered post on 16-6-1991 to concerned authorities on 16-6-1991, the petitioner's counsel apprised the whole position to central observer, Ashok Kumar and District Election Officer, N. S. Napachiyal, but they did not take any action, on 18-6-1991, a representation was given to the Election Commissioner. When no action was taken, telegrams were sent to the Chief Election Commissioner and Principal Secretary of Election Commission from New Delhi Telegraphs Office. Again a representation was given on 27-6-1991 to the Chief Election Commissioner and the Principal Secretary Miss Harinder Hira, was not feeling well, the petitioner's counsel met B. S. Bhalla, Senior Election Officer in the Office of Election Commission of India who assured the counsel to take sympathetically action on the representation of the petitioner. The petitioner alleged that the election is liable to be declared void on the ground contemplated under section 100(1)(d) 4 of the Representation of People Act. It was also urged that the respondent had used corrupt practice. It was contended that the respondent his agent and representatives used religious place for the election of the respondent and distributed 'Fatwa' of the religious leaders. During election, in Masjids, Imambaras and Dargah Sharcef in other places of Constituency, the respondent and his election agents distributed posters bearing photos of Shabi Imam Abdullah Bukhari and 'Fatwas' of Ulmal Deen Islam. The petitioner also says that the election of the respondent was void under section 123(3)(a) of the Representation of People Act on the ground that the respondent and his agents had asked his voters to poll in the name of Allah and in the interest of Babri Masjid and also Rahe Millate Islam. During speeches, the respondent and his agents said that only those persons will be Musalman who will vote for the Musalman otherwise he will not be a child of Musalman. The Fatwas distributed by respondent's consent appeal the voters not to cast their votes to any other Muslim candidates except Janta Dal candidates who solely represents the cause of the Muslim and Muslim religious places. The petitioner alleges that V. P. Singh and Ram Bilas Paswan, the National leaders, had delivered speeches with the consent of the respondent in Mestoh Park, Moradabad in the third week of May, 1991, asking the Thakurs, Backward class and Muslim to vote in favour of the respondent. The petitioner alleges that on the date of polling (15-6-91), the private vehicle owners, who were the voters, were restricted to ply their vehicle and were asked not to go to Polling Station otherwise they will meet dire consequences. On account of the threat allegedly given by the respondent, the election was not conducted free and fair. It was alleged that press passes were not given to the press and the journalists were not allowed to use their vehicles as they were the best judges to say whether the election was free and fair and they were also terrified. On these grounds, the petitioner challenges this petition.

3. Before filling written statement, applications under section 86(1) of the Act and order 6 Rule 16 read with order 7 Rule 11, C.P.C. have been moved. In the application under section 86 of the Act, the respondent has stated that no complete copy of the petition was not served on the respondent. The provisions of section 81(3) of the Act had not completed with and, therefore, the election petition was liable to be dismissed. The petitioner has referred to the copy of the documents on which he has relied upon, but the same have not been supplied to the respondent. It was urged that these documents were the integral part of the election petition and,

therefore the copies of the same should have been supplied to the contesting respondent. On these grounds it was prayed that the election be dismissed under section 26(1) of the Act.

4. A counter affidavit has been filed to this petition. It was urged that the petitioner has given the correct copy of the petition to the respondent. It was also stated that the respondent has not stated clearly as to what documents were not supplied to him.

5. An application under order 6 rule 16, C.P.C. read with order 7 rule 11, C.P.C. has been moved. It has been alleged that the pleadings in the petition are not in accordance with section 83 of the Act. They are vague, unnecessary vexatious and scandalous. They do not make out any cause of action. It was urged that in the pleadings the particulars have not been given as to raise any triable issue, therefore, the paragraphs 12(a) to (g), 14, 16(h) and 16 to 20 being vexatious and frivolous ought to be struck off.

6. A counter affidavit has been filed by the petitioner alleging that full facts have been furnished in the writ petition. It was also urged that the detail of detention has been given which discloses that by his illegal detention the election was materially effected. It has been also urged that the full facts have been detailed in the petition disclosing the full of action.

7. In respect of application under section 86(1) of the Act, it was urged by the learned counsel for the applicant that election of a candidate can be challenged only on the ground mentioned under section 100 of the Act. The petitioner has mentioned two grounds in his petition allegedly affected his election materially. They are :—

- (i) Because the Deputy Election Officer Sri Hardeo Singh, A. D. M. city illegally detained the petitioner upto 13-6-1991.
- (ii) Because the petitioner could not manage his election due to illegal detention and cannot take part in the people in the certain booth on 17th June, 1991.

N.B.—The words and the sentences used in the aforesaid grounds have been extracted as they existed in the petition.

8. On the above grounds it was urged that the election of the respondent was liable to be declared void on the ground contemplated under section 100(d)(iv) of the Act.

9. In paragraph 14 of the petition the petitioner has urged that the respondent has used corrupt practices. Material facts relating to this ground have been stated in paragraph 15. In paragraph 16 the petitioner has stated that on account of using corrupt practice the election of respondent are void. In paragraphs 17 to 20 again some facts relating to the second grounds have been given.

10. It was argued by the learned counsel for the applicant that in paragraph 15(h)(i) the petitioner has not given the details of religious places mosques, 'Imambaras' and 'Dargahs' where 'Fatwa' of some religious community are said to have been distributed. It was urged that alongwith details of these religious places the copy of 'Fatwa' allegedly distributed by the applicant ought to have been filed so that the respondent applicant could know the exact nature of allegation against him. It was urged that the 'Fatwa' were integral part of the petition and therefore, non-supply of these documents is a non-compliance of section 83(1) of the Act. In support of his contention the learned counsel for the applicant has placed reliance on Jagaraj Singh vs. Preetam Singh : 1992 Allahabad Law Journals 502. In this case Hon'ble Om Prakash, J. had held that where an allegation was made that the return candidate had not completed the age of 25 years either on the date of filling the nomination paper or on date of election and in support of his contention the petitioner was relying on his High School certificate and an application by a return candidate, then the said documents were integral part of election petition. The non-supply of the copies of these documents along with petition will amount to non-compliance of section 83(1)(3) of the Act. In this case his lordship had relied upon U. S. Shashi Dhar Vs. Karuna Karan AIR 1990 SC 294. In Shashidharan case the Supreme Court had held that if document containing the material facts relating to corrupt practices then that document should be made part of the petition otherwise a copy of the petition would not be a true copy. No case law contrary to the above two cases have been cited before me. The petitioner

is relying on certain 'Fatwa' which are alleged to have been distributed. According to him these 'Fatwa' had made an appeal to the voters in the name of 'Allah' to vote in favour or respondent-applicant. Hence a copy of this 'Fatwa' was integral part of the petition and it ought to have been supplied. In this way the petition is incomplete and non-supply of copy of these 'Fatwas' amount to non-compliance of the mandatory requirement of section 81(3) of the Act. On this very ground the petition is liable to be rejected under section 36(1) of the Act.

11. The second application under order 6 rule 16 also ought to be allowed. As I have already held above the petitioner has not given the details of the religious places where appeals were made to the voters to vote in favour of the respondent in the name of 'Allah'. The Copy of 'Fatwa' have also not been furnished, therefore, the material facts relating to the corrupt practices have not been disclosed. In paragraph 18 it was stated that during speeches respondent's agent said that only those persons will be Musalman who will vote for him. The date, time and place where the respondent is said to have been made alone speeches has not been stated. It has not been stated as to which agent has made the speeches. In paragraph 20 the petitioner has mentioned the name of V. P. Singh, Ram Bilash Paswan, the national leader who are said to have been delivered speeches asking the voter to vote in favour of respondent specifically instigating the backward classes and Muslim to vote for the respondent. It is no doubt stated in this case that the speeches were delivered in Mestan Park, Moradabad but the date and time is missing. The petitioner has used the words 'in the third week of May 1991'. This narration of time is very vague and does not disclose the complete cause of action.

12. The first ground regarding arrest of the petitioner is surprising very peculiar. He alleges that on account of his arrest, he could not manage his election. The petitioner has not detailed as to how he could manage the election if he was not arrested. Whether he would have canvassed for voting or whether he would have brought the voters to the polling booths or in what manner he would have managed his election, is not clear from the allegation. In the details of polling schedule as contained in paragraph 4 of the petition of date of poll was 15th June, 1991. The date of counting was 16th June, 1991. In paragraph 12(a) the petitioner has stated that he was arrested on 15th June, 1991 and was detained up to the mid night of 18th June, 1991. Since 15th June, 1991 was the very date of polling then obviously the petitioner had nothing to do to except to watch that the polling was done properly. It has not been detailed as to how and where the polling was affected on account of his arrest. It is not very uncommon that even people detained in jail are declared successful in election. The petitioner ought to have given full particular as to how his alleged detention has materially affected the election.

13. The petitioner has mentioned section 100(1)(d)(iv) of the Act. The relevant portion of this section reads as under:—

"That the result of the election in so far as it concerns returned candidate has been materially affected.

(4) by non-compliance with the provisions of the constitution or of this Act or of any rule or orders made in this Act."

It has not been shown to me as to what provision of the constitution or the Act has been violated. There is no averment as to disclose that this non-compliance has materially affected the election.

14. For the reasons mentioned above the second application under order 6 rule 16 of the Code of Civil Procedure is also allowed.

15. The paragraphs 12, 15, 17 to 22 of the election petition are struck off.

16. The petition is rejected.

17. The office will intimate the substance of decision to the Election Commission and speaker of the Lok Sabha without delay and an authenticated copy of the decision will be

delivered to the Election Commission as contained in section 103 of the Act.

18. The petitioner shall pay respondent as costs which is quantified at Rs. 1000. This amount will be paid out of the security deposited by the petitioner. Balance will be refunded to him.

Date: 26-2-1983.

Sd/- G.D.D.

TRUE COPY

S.O. COPYING (E) SECTION,  
HIGH COURT, ALLAHABAD.

नई दिल्ली, 4 जनवरी, 1994

आ.प्र. 8 :—निर्वाचन आयोग निम्नलिखित आर्जी सं. 1991 का 4 में कर्नाटक उच्च न्यायालय के तारीख 30-6-93 के आदेश को लोक प्रतिनिधित्व अधिनियम 1951 (1951 का 43) की धारा 106 के अनुसरण में यहाँ प्रकाशित करता है।

[सं. 82/कर्ना. लोक स. /4/91]

आदेश से,  
राम किशन, सचिव

New Delhi, the 4th January, 1994

O.N. 8.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the order of the High Court of Karnataka dated 30-6-93 in Election Petitioner No. 4 of 1991.

[No. 82/KT-HP/4/91]

By Order,  
RAM KISHAN, Secy.

IN THE HIGH COURT OF KARNATAKA AT  
BANGALORE

Dated the 30th day of June, 1993

Before the Hon'ble Mr. Justice Shivaraj Patil.

Election Petition No. 4/1991

1. D. P. Sharma, major, Proprietor, Sharma Transports,  
TSP Road, Kalasipalyam, Fort, Bangalore-2.

2. S. N. Prasanna Kumar, major, No. 475, 7th Bloc,  
Jayanagar, Bangalore.

3. G. N. Hegde, major, S/o Naryana Hegde, 283-A, 9th  
Main Road, Jayanagar, Bangalore. ..Petitioners

(By Sri H. K. Vasudeva Reddy—Adv not present).

Prof. K. Venkatagiri Gowda, father's name not known to  
the petitioner, major, No. 440, 7th 'B' Main, IV  
Block, Jayanagar, Bangalore-11. ..Respondent

(By Smt. M. N. Pramila & Sri H. S. Jois—Advocates).

This Election Petition is filed by the petitioners U/s. 81 r/w. Section 100(1)(b) and (d) 123(3) and (3A) of the Representation of the People Act, 1951, challenging the Constitutional validity of Parliamentary Election of Respondent held on 15-6-1991 to the Lok Sabha No. 13, Banaglore South Parliamentary Constituency and the petitioners praying that this Hon'ble Court may be pleased to:—

Pray for a declaration that the Election of the Respondent as the returned candidate from the 13th Bangalore South Parliamentary Constituency for the House of the People (Lok Sabha) at the Election held on 15-6-1991, be declared void under the provisions of Sections 100(1) and 3(A) r/w. Sec. 123(3) of the Representation of the People Act, 1951.

This Election Petition coming on for orders this day, the court made the following :—

### ORDER

Petitioners are not present before the Court today despite the order dated 24-6-1993. The petitioners also are not leading any evidence today. Under the circumstances, the petition has to be dismissed for non-prosecution. Accordingly, it is dismissed, for non-prosecution.

Sd/- Judge

नई दिल्ली, 6 जनवरी, 1994

आ.प्र. 9:—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13क की उप-धारा (I) और जम्मू व कश्मीर लोक प्रतिनिधित्व अधिनियम, 1957 के भाग-III की धारा 7 के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग जम्मू व कश्मीर सरकार के परामर्श से श्री एम.एल. सैलोवा, आई.ए.एस., आयुक्त/सचिव, लोक निर्माण विभाग, जम्मू व कश्मीर को उनके कार्यभार संभालने की तारीख से आगामी आदेशों तक जम्मू व कश्मीर राज्य क्षेत्र के मुख्य निर्वाचन अधिकारी के रूप में नामित करना है।

2. श्री एम.एल. सैलोवा, आई.ए.एस., जम्मू व कश्मीर सरकार के अधीन सभी पदभार या किंगो कार्य का पदभार तत्काल सौंप देगे या धारण करना समाप्त कर देंगे, जो कि वे ऐसा पदभार ग्रहण करने से पहले धारण कर रहे थे। किसी अववाद को अनुमति नहीं दी जायेगी।

3. श्री एम.एल. सैलोवा, आई.ए.एस. को जम्मू व कश्मीर के मुख्य निर्वाचन अधिकारी के रूप में कार्य करते हुए जम्मू व कश्मीर सरकार के अधीन किसी प्रकार का कोई भी अतिरिक्त कार्यभार ग्रहण करने का आदेश नहीं दिया जायेगा, सिवाय इसके कि उनको राज्य सचिवालय में निर्वाचन आयोग के अर्वांत विभाग के प्रभारी, सरकार के सचिव नामित किया जायेगा, जैसा कि राज्य सरकार द्वारा निर्णय लिया गया है।

4. यदि श्री एम.एल. सैलोवा, आई.ए.एस. को आयोग के पूर्व लिखित अनुमोदन के बिना किसी भी प्रकार का कोई अतिरिक्त कार्यभार सौंपा या ग्रहण करवाया जायेगा तो वे इस आदेश निर्वाचन के अनुसार ऐसा अतिरिक्त कार्यभार ग्रहण करने का तारोख से मुख्य निर्वाचन अधिकारी, जम्मू व कश्मीर के पदभार से अपने आप हटा दिए गए समझे जायेंगे और किसी अलग आदेशों को जारी करने का आवश्यकता नहीं होंगी। उसके पश्चात मुख्य निर्वाचन अधिकारी के रूप में उन की जगहों

और कार्य के तथाकथित निर्वहन में उनके द्वारा की गई रभी या कोई कार्यवाही अप्राधिकृत और नास्तिक और शून्य होंगी और वे अपने विरुद्ध अनुशासनिक कार्रवाई के लिए स्वयं उत्तरदायी होंगे।

[सं. 154/ज.क./94]

आदेश से,  
के.पी.जी. कुट्टी, सचिव

New Delhi, the 6th January, 1994

O.N. 9.—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950 (43 of 1950) and section 7A of Part-III of the Jammu and Kashmir Representation of the People Act, 1957, the Election Commission of India, in consultation with the Government of Jammu and Kashmir hereby nominates Shri S. L. Sailova, IAS, Commissioner/Secretary, Public Works Departments, Jammu and Kashmir as the Chief Electoral Officer for the State of Jammu and Kashmir with effect from the date he takes over charge and until further orders.

2. Shri S. L. Sailova shall cease to hold and hand over forthwith the charge of all or any charges of work, under the Government of Jammu and Kashmir which he may be holding before such assumption of office. No exceptions will be permitted.

3. Shri S. L. Sailova while functioning as the Chief Electoral Officer, Jammu and Kashmir shall not be ordered to hold any additional charge whatsoever under the Government of Jammu and Kashmir except that he should be designated Secretary to the Government incharge of Department under the Election Commission in the State Secretariat is decided by the State Government.

4. If Shri S. L. Sailova is entrusted with or is made to hold any additional charge of any kind whatsoever, without the prior written approval of the Commission, he shall stand removed automatically from the office of the Chief Electoral Officer, Jammu and Kashmir from the date of assumption of such additional charge as per this order and no separate orders will or need to issue. All and any action taken by him thereafter in the so called discharge of his duties and functions as the Chief Electoral Officer shall be unauthorised and non-est and null and void and he shall render himself liable to disciplinary action.

[No. 154/J&K/94]

By Order,  
K. P. G. KUTTY, Secy.